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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-ninth session
Agenda item 9 (a)

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS

QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

Written statement submitted by the World Society of Victimology, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[22 August 1997]

1. We appreciate the reports of Mr. Leandro Despouy and of Mr. Louis Joinet pursuant to Economic and Social Council resolution 1985/37 and the Sub-Commission decision 1996/119, identifying the States that have proclaimed, extended or terminated a state of emergency and summing up the principles to campaign against impunity of perpetrators of human rights violations.

2. There is a level below which we cannot go in the treatment of detainees or prisoners.

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3. The question of the administration of justice and the human rights of detainees becomes even more different, intricate and sensitive when a people alleges a grievance against a State.

4. Punishment according to lawful sentences should not be an act of violence committed by one person or many against a private citizen, but it should be public, prompt, necessary, the minimum possible under the given circumstances, proportionate to the offence and not disgraced by law.

5. The position that we wish to emphasize and strongly feel that it merits the attention of this Sub-Commission, Governments, intergovernmental organizations and the community of non-governmental organizations is that if a people who rightfully refuse to accept that they violate the public order of the criminal law of a State.

6. The such people as that of the disputed state of Jammu and Kashmir, and the whole State is the Republic of India. The removal of Kashmiris to various prisons and detention centres in India is clearly constitute a punishment of the severest package of punishment. The practice of detaining them in prisons remote from their families is a cold atrocity. Exposing sheer and cruel treatment by a dispirited, unsympathetic or hostile prison staff in a foreign habitat, make the punishment even more inhumane and unbearable.

7. Do these Kashmiris in far removed prisons in India, have any access to the Law? Do they enjoy the unfettered ability to make contact and have confidential meetings with lawyers and to approach the courts? The answer is a simple "no". The geographical location as a real obstacle to be overcome, since lawyers will not eagerly make a trip to these remote locations.

8. The cycle of a Kashmiri to his basic human rights at variance with the avowed stand of India, would of course anger the Government of India. Nevertheless, it should be more than ever a cause of concern for an Indian to respect a Kashmiri "prisoner's" inherent dignity as a person and to recognize that the Kashmiri prisoner does not surrender the protection of law on being imprisoned.

9. This Sub-Commission, Governments, NGOs and the average Indian should ensure at the very minimum that the Indian penal system affords procedures and facilities for ensuring that the Kashmiri prisoner's treatment is at all times just, fair and humane.

10. Mass arrests and the detention of Kashmiris within the state and farther away in remote prisons in India are a serious humanitarian issue. The Government of the Republic of India and the International Committee of the Red Cross signed a Memorandum of Understanding on 22 June 1995 on the question of detained Kashmiris. We find that this Memorandum of Understanding does not seem to have made any marked difference to the plight of Kashmiri prisoners. In this regard we urge this Sub-Commission and NGOs to call upon the Government of India: